

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Recursion Software, Inc.

(b) County of Residence of First Listed Plaintiff Collin County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David H. Harper
Haynes and Boone, L.L.P.
901 Main Street, Suite 3100
Dallas, TX 75202-3789
(214) 651-5247

DEFENDANTS

General Motors Corporation d/b/a GM OnStar

County of Residence of First Listed Defendant Detroit, Michigan

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

Not Known

APR 10

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☒ 4 ☐ 4
- Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 23 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 20 Copyrights <input type="checkbox"/> 30 Patent <input type="checkbox"/> 40 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	SOCIAL SECURITY <input type="checkbox"/> 61 HIA (1395ff) <input type="checkbox"/> 62 Black Lung (923) <input type="checkbox"/> 63 DIWC/DIWW (405(g)) <input type="checkbox"/> 64 SSID Title XVI <input type="checkbox"/> 65 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 70 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 71 IRS—Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause)

Do not cite jurisdictional statutes unless diversity.)

17 USC § 101, et seq

Plaintiff is suing for Defendant's unauthorized copying of its copyrighted software in its OnStar system pursuant to claims for copyright infringement, breach of license agreement and unjust enrichment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 12,992,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

4/10/02

SIGNATURE OF ATTORNEY OF RECORD

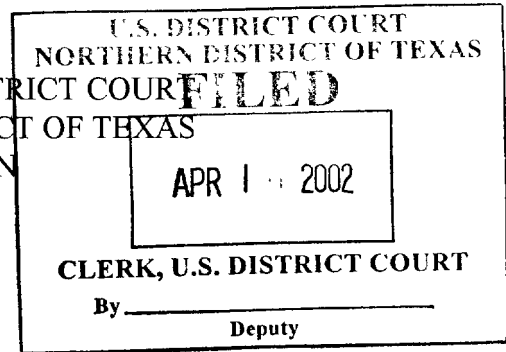
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FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



RECURSION SOFTWARE, INC.,

Plaintiff,

VS.

GENERAL MOTORS CORPORATION
d/b/a GM ONSTAR,

Defendant.

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CIVIL ACTION NO.

3-02-cv-07867

**PLAINTIFF RECURSION SOFTWARE, INC.'S
ORIGINAL COMPLAINT AND JURY DEMAND**

Plaintiff Recursion Software, Inc. ("Recursion") complains of Defendant General Motors Corporation d/b/a GM OnStar ("GM OnStar" or "Defendant") as follows:

I.

PARTIES

1. Plaintiff Recursion Software, Inc. is a corporation duly organized and existing under the laws of the State of Texas with its principal place of business in Texas. For all purposes in this lawsuit, Recursion is the successor-in-interest to ObjectSpace, Inc.

2. Defendant General Motors Corporation is a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business at 300 Renaissance Center, Detroit, Michigan 48265-3000. Pursuant to FED. R. CIV. PROC. 4(h)(1), General Motors may be served with process by serving its registered agent in Texas. CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

II.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action because Count One arises out of the Copyright Laws of the United States. This Court also has subject matter jurisdiction over this action because the Plaintiff and Defendant are citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Jurisdiction in this Court is founded upon 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.

4. This Court has general personal jurisdiction over GM OnStar based on its extensive contacts with Texas and specific personal jurisdiction over GM OnStar based upon its contacts with Recursion in Texas related to the subject matter of this action.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants are deemed to reside in this judicial district and because a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this judicial district. For all relevant purposes in this case, Recursion is the successor-in-interest to ObjectSpace, Inc. (“ObjectSpace”) which had its principal place of business in Dallas, Dallas County, Texas and conducted business with and entered into the contract at issue with GM OnStar in Dallas, Texas.

III.

FACTUAL BACKGROUND

Background of Recursion Software, Inc.

6. Recursion is the successor-in-interest to ObjectSpace, Inc. (“ObjectSpace”) for all purposes in this lawsuit. Recursion has acquired the intellectual property rights and licensing and contractual rights to certain software formerly owned by ObjectSpace known as Voyager®, an award-winning product line that simplifies and unifies the most common industry standards and is

used by hundreds of companies worldwide to quickly build high-impact distributed systems. The Voyager® product family includes the Voyager Application Server, Voyager ORB Professional, and Voyager Value Extensions. The Voyager® software is collectively referred to as the “Copyrighted Software.”

7. Due to the valuable nature of the Copyrighted Software, ObjectSpace invested considerable resources in protecting it through federally registered copyrights. Voyager® is protected through Copyright Registration No. TXu 787-970. A true and correct copy of the 1997 Copyright Registration is attached to this Complaint as Exhibit A.

8. Recursion is the sole owner of all rights, title and interest in the Copyrighted Software.

Background of Defendant General Motors Corporation/OnStar

9. Defendant General Motors Corporation is a global automobile manufacturer. General Motors also conducts business as GM OnStar, a division of General Motors that specializes in in-vehicle communication services.

10. GM OnStar entered into a software license agreement with ObjectSpace in 1999 (the “License Agreement”) for a license to the Copyrighted Software. Pursuant to the License Agreement, GM OnStar received a “Site License” to the Voyager Application Server, which provided it with a nonexclusive, nontransferable license to use the Copyrighted Software only at GM OnStar’s site at 1400 Stepheson Highway, Troy, Michigan (the “Authorized Site”).

11. Also pursuant to the License Agreement, GM OnStar agreed to purchase three years of software maintenance for the Copyrighted Software at \$350,000.00 per year.

12. On information and belief, GM OnStar has copied, installed, used, executed and/or displayed the object code version of the Copyrighted Software at three sites other than the Authorized Site in Troy, Michigan. Specifically, on information and belief, GM OnStar has copied, installed, used, executed and/or displayed the Voyager® Application Server (and other Voyager software) in Charlotte, North Carolina (University Research Park location), Sunnyvale, California (General Magic, Inc. location), and Raleigh, North Carolina (IBM location) (collectively the “Unauthorized Sites”).

13. GM OnStar has profited from the unauthorized copying, use and distribution of, or by facilitating and contributing to the unauthorized copying, use and distribution of, the Copyrighted Software.

IV.

CAUSES OF ACTION

Count One: Copyright Infringement

14. Recursion refers to and incorporates by reference the factual allegations set forth above and the factual allegations in other Counts of the Complaint.

15. Recursion is the owner of the Copyrighted Software, which was published in the United States with proper copyright notices and is entitled to the protection of federal copyright law.

16. GM OnStar has systematically copied, distributed and used the Copyrighted Software, or has facilitated the unauthorized copying, distribution and use of the Copyrighted Software, at the Unauthorized Sites without Recursion’s authority or consent. As such, GM OnStar has violated Recursion’s exclusive rights in the Copyrighted Software as provided by the

Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.* for at least years 2000, 2001 and 2002.

17. Upon information and belief, GM OnStar has acted willfully, intentionally, purposefully, and in disregard of and with indifference to Recursion's rights.

18. As a direct and proximate result of GM OnStar's infringement of Recursion's copyrights and exclusive rights under copyright, Recursion is entitled to its actual damages as well as to the Defendant's profits for each act of infringement, pursuant to 17 U.S.C. § 504(b), in an amount within the jurisdictional limits of this Court, but in no event less than \$12,992,000. The cost of the original license for one site was \$3,164,000. Three years of maintenance for each site is \$1,050,000. In addition, GM OnStar has not paid the last year of required maintenance for the Authorized Site. These amounts total \$12,992,000.

19. Alternatively, Recursion is entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$100,000 with respect to each act of infringement, or such other amounts as the Court may deem proper under 17 U.S.C. § 504(c). Further, Recursion is entitled to additional relief for GM OnStar's willful infringement.

20. Recursion is also entitled to its attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

Count Two: Breach of Contract

21. Recursion refers to and incorporates by reference the factual allegations set forth above and the factual allegations in other Counts of the Complaint.

22. GM OnStar entered into the License Agreement on or about June 30, 1999.

23. Under the express terms of the License Agreement, GM OnStar agreed that it was authorized to use the Copyrighted Software only at the Authorized Site, pursuant to the Site License specified in the License Agreement and in the parties' purchase orders and invoices.

24. GM OnStar further agreed to purchase maintenance for the Copyrighted Software for the years 1999, 2000, and 2001.

25. GM OnStar breached the License Agreement by copying, installing, distributing and/or using the Copyrighted Software at the Unauthorized Sites without Recursion's authority or consent.

26. Further, GM OnStar breached its contract with Recursion by failing to pay to Recursion the amounts due and owing for the annual maintenance fees on the Copyrighted Software.

27. All conditions precedent for Recursion to recover pursuant to the License Agreement have occurred or been fulfilled, including demand and presentment.

28. As a direct and proximate result of GM OnStar's breach of its contractual obligations, Recursion has been damaged in an amount that is within the jurisdictional limits of this Court, but in no event less than \$12,992,000.

29. Recursion is also entitled to its attorneys' fees and costs pursuant to Chapter 38.001 *et seq.* of the Texas Civil Practice and Remedies Code.

Count Three: Unjust Enrichment

30. Recursion refers to and incorporates by reference the factual allegations set forth above and the factual allegations in other Counts of the Complaint.

31. GM OnStar received, used and obtained the benefits of the Copyrighted Software without paying the full price for such software.

32. GM OnStar has unjustly retained the Copyrighted Software, and the profits generated from its unauthorized use, against the fundamental principles of justice, equity and good conscience.

33. Recursion has been damaged by Defendant's copying and use of the Copyrighted Software, and by the unjust and inequitable retention of the Copyrighted Software and the profits gained therefrom. Recursion hereby sues under the theory of unjust enrichment and under all similar equitable theories.

34. Recursion is entitled to the payment of the full price of the license fees for the Copyrighted Software and to all of Defendant's profits from its unauthorized use of the Copyrighted Software in an amount within the jurisdictional limits of this Court, but in no event less than \$12,992,000.

V.

JURY DEMAND

Recursion hereby demands a trial by jury of all issues alleged in this Complaint.

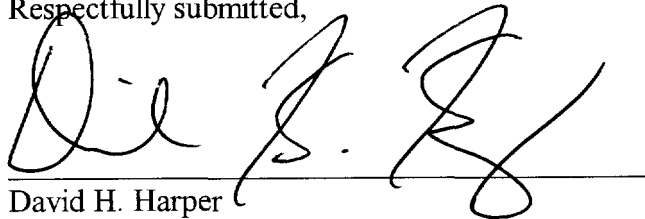
VI.

PRAYER

WHEREFORE, Plaintiff Recursion Software, Inc. prays for the following relief:

1. Defendant General Motors Corporation be ordered to account for and to pay to Recursion all profits derived by reason of GM OnStar's acts alleged in this Complaint;
2. Defendant General Motors Corporation be ordered to pay to Recursion all actual damages sustained by it, including, without limitation, the loss of license fees and the loss of sales and profits that it would have made but for Defendant's acts; or in the alternative, statutory damages under 17 U.S.C. § 504(c) of \$100,000 per copyrighted work infringed by Defendant;
3. A constructive trust be placed upon Defendant General Motors Corporation's profits gained through the unauthorized use of Recursion's Copyrighted Software;
4. A permanent injunction be entered restraining GM OnStar from any further unauthorized copying, use or distribution of the Copyrighted Software;
5. Recursion be awarded its costs of suit, including reasonable and necessary attorneys' fees and expenses for prosecution and appeal, if any, of this matter;
6. Recursion be awarded prejudgment and post-judgment interest at the highest legal rate on all sums awarded in the Court's judgment; and
7. Recursion be awarded such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

Two handwritten signatures are shown above a horizontal line. The signature on the left is for David H. Harper, and the signature on the right is for Peter D. Marketos.

David H. Harper
State Bar No. 09025540
Peter D. Marketos
State Bar No. 24013101

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